Issue #13: Reciprocal Compensation

This issue was withdrawn by Sprint as the result of the FCC's ISP Remand Order.

Issue #14: Geographically Relevant Interconnection Points (GRIP)

This issue involves the terms and conditions governing Sprint's points of interconnection to Verizon's network. Verizon's final offer is the same as its initial offer: that its Virtual GRIP (VGRIP) plan be adopted. Sprint has rejected this because: (1) given that Sprint has existing network points close to, but not at, many of Verizon's tandems, Sprint would still incur transportation costs associated with taking traffic to and from the tandem building or Verizon tandem wire center; and (2) it would permit Verizon to dictate where Sprint can and should deploy facilities and provide service. Sprint also recited its belief that any GRIP plan is unlawful.

Sprint's final offer is a marked compromise from its initial offer. It suggests that the ICA include a provision (Sprint Final Offer Exhibit 16) recently included in a settlement entered into by Sprint and Bell South which encompasses nine states in the Bell South territory. The effect is to grandfather the existing Verizon/Sprint interconnection locations, but to require that any new Sprint facilities must be established within five miles of Verizon's switching center, either tandem or end office switch. In addition, Sprint is required to establish additional interconnection locations if traffic is greater than 8.9 million minutes a months and greater than 20 miles and not in a local calling area.

This proposal is manifestly reasonable and should be accepted. First, it addresses the situation where a CLEC may wish to locate its point of interconnection far from Verizon's switch. In that case, this ICA term would not be available.

Second, it reasonably balances the two valid concerns: First, Section 252(c)(2) of the Telecommunications Act unambiguously requires that an ILEC must allow a CLEC to interconnect at any technically feasible point. 47 U.S.C. §252(c)(2), 47 C.F.R. §51.305. On the other hand, the FCC has stated in the Local Competition Order at ¶199 that a CLEC that chooses a technically feasible but expensive interconnection location must bear the costs of that interconnection, pursuant to §252(d)(1).

This proposal reasonably balances those concerns and therefore should be accepted.

Issues #16 and #17: Charges for Local Calls, Local Call Over Access Trunks

These are interrelated issues (also involving, to some extent, Issues #12 and #28[15]) relating to the charges associated with traffic Sprint feels should be treated as local although carried over Verizon's access facilities, where the originating and terminating points are located within the same local calling area. Sprint wants to use its existing access toll switching and trunking facilities to route multi-jurisdictional traffic, including local traffic within the same local calling area. Specifically, it wants to offer 00-minus service which allows a Sprint subscriber to make voice activated telephone calls.

Verizon's position is that unless the originating and terminating networks are different, then access charges apply. It claims that this "network architecture" analysis (in contrast to the end-to-end analysis proposed by Sprint) is required by 47 C.F.R. §51.701(e), that two state commissions have rejected Sprint's argument, and that

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[15] Issue #12 addresses the definition of local traffic. Issue #28 involves Sprint's collocation obligations, if any. Sprint has suggested that if Verizon agrees to Issues 16 and 17, it will agree to Issue #28.

treating these calls as "reciprocal compensation traffic would inflict deep financial wounds upon Verizon." Verizon Final Offer at 71.

Sprint's position clearly should be adopted. First, Sprint has agreements with every other RBOC (Qwest, SBS and Bell South) to deploy wireline 00-minus calling. This means that every telephone customer in the country – except those who are Verizon customers – has the opportunity to enjoy this service.[16] Since the Verizon footprint consists of 40% of the nationwide access lines, Sprint cannot roll out or market this service on either a statewide or national basis. As pointed out by Sprint at 53 of its Final Offer (emphasis in original): "This is an innovative, competitive product offering that could be immediately rolled out ubiquitously to both rural and urban areas in Pennsylvania. Clearly the benefits of bringing choice to telephone consumers in Pennsylvania far outweigh Verizon's stance that any and all 00-minus initiated calls are automatically access chargeable and not subject to reciprocal compensation because 00-minus calls use trunks that Verizon claims Sprint also uses for access."

Second, Verizon's reliance on §51.701(e) is greatly misplaced. First, it arose from an FCC Order (the ISP Remand Order) addressed entirely to the issue of the appropriate rate structure to be used in providing service to ISPs. It made no determination that an end-to-end analysis for the purposes of determining reciprocal compensation traffic is in any way inappropriate. In fact, as explained by Sprint in its Final Offer at 51-52, there are local calls today that are originated on Verizon's network, traverse another carrier's network and ultimately terminate back on Verizon's network that are not access-chargeable. Second, the ISP Remand Order has itself been appealed. Third, while §51.701(e) does define "reciprocal compensation," it does not say that only traffic that originates and terminates on different carrier networks is subject to reciprocal compensation, but rather that such traffic is subject to reciprocal compensation.

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16 Verizon does not offer voice activated or initiated calling to its wireline customers.

End-to-end analysis has been accepted by the FCC, as explained by Sprint and in fact endorsed by Verizon in comments it filed in ISP Remand proceeding (Sprint Final Offer Exhibit 15). It makes sense to use it here, because to the subscriber, this is a local, not toll, call. I can't imagine many people would be willing to pay toll rates for a call that originates and terminates in their local calling area, regardless of what trunk the call was carried over.

With respect to Verizon's fear of "deep financial wounds," it should be noted that Sprint does not seek to charge all 00-minus calls as local, as some of those calls may in fact be interstate. It has offered to pay the appropriate rates for the various types of traffic. As explained in Sprint's Offer at 61:

> From a technical standpoint, the only remaining issue is how to determine if the 00- call is a local call or an access chargeable call. Where measurement capabilities do not exist, billing issues should be resolved through the application of Percent Local Usage (PLU) factors provided by the competitor to the ILEC. This precedent has existed for many years in the routine use of such factors in access charge billing and the same audit and verification processes should be established to ensure the integrity of the billing process. Sprint is currently developing the capability to accurately measure and report all local traffic for this type call. Further, Sprint has offered an additional option for billing this traffic that requires absolutely no impact on Verizon's billing systems. Sprint is agreeable to initially receiving charges, subject to true-up, for these local calls since Verizon billing programs may not have the current capability to utilize PLU factors. Credits for local calls billed at access rates would be provided one month in arrears.

Finally, Sprint is also willing to offer language in the Interconnection Agreement to the effect that if unable to correctly identify the traffic, Sprint will pay

access for the traffic. In addition, Sprint will give full audit rights to Verizon if it seeks to validate Sprint PLU factors as a reasonable safeguard.

In conclusion, acceptance of Verizon's position means that customers in Pennsylvania and the rest of the Verizon footprint would be denied the benefit of new, innovative service offerings. Sprint's proposals are reasonable and should be adopted.

Issues #18 and #19: MAN Commingling and Multiplexing

Issue #18 is Sprint's request to transmit UNE and access traffic over the same facilities. Issue #19 is Sprint's request that Verizon provide UNE multiplexing to Sprint. Sprint has offered to withdraw Issue #19 if the Commission adopts its position on Issue #18.

Verizon has refused, claiming with respect to Issue #18 that: (1) it has no duty to provide commingling since the 8th circuit has ruled that ILECs do not have to provide combinations that do not already exist[17]; (2) Sprint's proposal violates the prohibition against commingling established by the FCC (in its Supplemental Order Clarification[18]) and the Commission (in both the Global Order and the UNE Order[19]); and (3) Sprint's proposal violates §251(g) of the Telecommunications Act and "subverts the

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17 Iowa Utilities Board v. FCC, 219 F.3d 744 (8th Cir. 2000).

18 In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1966, Supplemental Order Clarification, CC Docket No. 98-96, FCC 00-183, June 2, 2000).

19 Joint Petition of Nextlink Pennsylvania, et al. for Adoption of Partial Settlement, Docket Nos. P-00991648 and P-00991649, Commission Opinion and Order entered August 26, 1999; Further Pricing of Verizon Pennsylvania, Inc.'s Unbundled Network Elements, Docket No. R-00005261, Interim Opinion and Order, May 24, 2001.

goals of access reform" as provided in the CALLS Plan adopted by the FCC and to which Sprint is a signatory. Verizon's argument on Issue #19 is that (1) Sprint hasn't met the "local use restriction" set forth in the FCC's Supplemental Order Clarification and adopted by the Commission; (2) it has no legal obligation to provide stand-alone multiplexing, although it is already voluntarily provided on a limited basis (DS3 to DS1 and DS1 to DS0); and (3) to provide Optical Carrier multiplexing, Verizon would have to install new equipment that does not now exist in Verizon's central offices.

Sprint has explained in its Final Offer at 3, footnote 2, that "The ability to employ engineering economic efficiencies enable carriers to compete effectively and to provide the best, lowest cost to consumers. Conversely, the lack of engineering economic efficiencies is the equivalent to a competitive death sentence. Therefore, every carrier attempts to achieve and maintain engineering economic efficiencies." It further explained in its Final offer at 59: "A Metropolitan Area Network (MAN) seeks to utilize fiber rings around various metropolitan areas/networks and to combine various types of traffic (specifically, access traffic, local traffic, transport traffic and wireless traffic) moved on that network by Sprint."

Sprint pointed out (Final Offer at 60) that it is not seeking to ". . . commingle special access services associated with Enhanced Extended Loops (EELs) because Sprint does not seek to also combine a loop connection for transport of traffic. Sprint is not asking Verizon to convert exiting special access circuits to UNE loop/transport combinations." Id. at 60.

With respect to the specific concerns raised by Verizon, Sprint has responded that the FCC order addresses EELs, which are not involved in this issue, that it is not trying to arbitrage access charges, that transmission facilities are clearly a UNE and therefore Verizon cannot impose restrictions on Sprint's use of it, and that other RBOCs (SBS and Qwest) have permitted it.

After extended consideration of this issue, I recommend that Sprint's proposal with respect to Issue #18 be adopted for the reasons set out below. Therefore, it is unnecessary to address Issue #19.

First, it is clear that the FCC's Supplemental Order Clarification is not relevant here. The commingling prohibited by the FCC there was special access and UNE traffic – here it is switched access and UNE traffic. Verizon's own witness Fox[20] agreed that EELS were not an issue here. See, Tr. 103, where she explained: "And the FCC clearly holds out that switched access from special access service. Yes, it's true that the June second supplemental order clarifies, deals with special access and specifically prohibits commingling of EELs with tariff services. It does not specifically address switched access because I think switched access is being held out on the side, it's subject to access reform."[21]

Verizon's position that Sprint's proposal should be rejected because of the on-going access charge reform (the CALLS program) must itself be rejected. Otherwise, CLECs such as Sprint will be unable to fully utilize their facilities in an economically efficient fashion. Verizon's approach is clear – it will wait for a FCC order to "force" it to address Sprint's request. "To the extent that the FCC rules change and as a matter of policy that we are forced to allow commingling, then we will follow all of the rules and regulations that we need to. Until then it's our position that commingling should be prohibited." Tr. 108.

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20 Susan Fox is employed by Verizon as Product Manager, for Loop Transport, EELs, Unbundled (sic).

21 I would like to make clear that I am not relying on Ms. Fox for an opinion as to legal relevance. She is an expert in the type of actual facilities at issue here, and her testimony should be understood in that aspect.

Sprint is seeking to use its facilities so as to produce economic engineering efficiencies. As Sprint witness Nelson explained at 108: "I am forced to have one set of trunks that are access, and multiplexing equipment associated with that, and then I am forced to have a separate overlay network that is just UNE transport. What we're essentially trying to do is get one pipe, get the UNE services and access services on the same pipe efficiently."

Sprint should be permitted to do so.

Issue #20: Collocation Space Reservation

It is somewhat unusual that this issue has not been resolved, as both parties recognize that the Commission addressed the issue of collocation space reservation in the proceeding at Rhythm Links v. Verizon Pennsylvania, Inc., Docket No. R-00994697, Opinion and Order entered June 8, 2001.

However, Sprint is absolutely correct that the tariff filing which purported to be the compliance filing in response to the Commission's Opinion and Order is completely silent with respect to the Commission's determination as to space reservation.

Since Verizon obviously has no hesitation in ignoring a clear Commission directive, it is clear that the Commission's decision concerning the space reservation policy needs to be articulated in this Interconnection Agreement.

It should be noted, however, that while the Commission did direct Verizon to adopt a two-year reservation period, it also recognized that Verizon may petition the

Commission to "extend the time period beyond two years in situations where it can make an adequate demonstration that additional time is necessary."[22] Opinion and Order at 90.

Therefore, the Sprint proposal should be adopted.

Issue #21: Reallocation of Facilities

This issue involves the changeover of Sprint DSO (voice grade) connections to line-sharing. Sprint's position is that no additional cabling is necessary, that restencilling is adequate and that a minor augment charge of $200, as is the case with other RBOCs, is sufficient.

Verizon's position is that it not possible to reuse the cable, as shown by the experience developed in a New York collaborative. It modified its original position that a fee of $2,050 is required to now permit vendors supplied by Sprint (approved by Verizon) to do the work, along with payment of a fee to Verizon of $550.

Verizon's position is reasonable and should be adopted. It convincingly established that the possibility of reusing the cable was examined in the New York Collaborative and found to be not workable. Permitting Sprint to have the work done by its own vendors puts Sprint in a position to control costs.

There is no support in the record for the fee of $550, which Verizon explains was selected because it is the "lowest current engineering and implementation fee for any collocation arrangement." However, it appears to be reasonable, until an appropriate cost study is provided.

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22 It cautioned Verizon to "exercise reasonableness" in seeking this relief.

Issue #22: Timing of Transport Availability

Sprint explained that currently it is not able to order DSLAM transportation at the same time it orders a collocation arrangement. The result is that the arrangement is completed months before the transportation is available. It notes that both SBC and Qwest (as well as Sprint itself in its ILEC capacity) permit the parallel provisioning of DSLAM transport and collocation cage construction, and requests that Verizon be directed to provide it on or before December 31, 2001. It rejected Verizon's offer to undertake a trial as Verizon was unwilling to make a firm commitment for implementation.

Verizon admitted that parallel provision has not been permitted. Verizon's original position was to wait until completion of the Cavalier trial (which it asserts involves both dark fiber and collocation provisioning). As the result of discussion at the arbitration conference, Verizon in its Final Offer agreed to conduct a test of parallel provisioning within 90 days. At the end of 90 days, Verizon will inform Sprint whether parallel provisioning of collocation and DS-3 transport is possible.

After submission of the respective final offers, Verizon modified its proposal. It now is offering to conduct a trial (no dates are given), and the suggested contract language (Part III, Section 2.6) provides that the parties "will make commercially reasonable efforts to establish such processes by June 30, 2002. In the event either party encounters circumstances that will prevent it from implementing such processes by June 30, 2002, that party will advise the other party of this prior to June 30, 2002 and the parties will agree upon a new commercially reasonable date for implementing the processes."

Sprint has had no opportunity to respond to this latest offer. I indicated that, given the lateness of the submission and the forma in which Verizon's new proposals were submitted, I would not consider them

I am considering this one, however, because the use of a trial was discussed extensively at the arbitration conference held on July 12, 2001. While I agree with the concept of a properly conducted trial (and Sprint did, as well), Verizon's proposed language is still too indefinite. There is no date by which the trial is to start or conclude, only a date for implementation – basically a year from now – that the parties will "make commercially reasonable efforts" to achieve. I recognize that this addresses Sprint's concern that the prior proposal was open-ended – there was a time period for the trial, but not for implementation. Sprint's witnesses indicated that they needed some firm commitment on Verizon's part (which Verizon refused to provide) as to when the parallel ordering and provisioning will be available.

This language leaves open the very real possibility that Verizon will not even undertake this trial until next spring or summer, and then claim that the anticipated process will not be implemented by June 30, 2002.

To expect to have transport available 15 days after completion of the collocation arrangement is hardly unreasonable. Recognizing that Verizon has refused to provide this previously, it also is reasonable to allow it an appropriate time to ensure that it can be implemented successfully. Obviously, this benefits Sprint as well. The time Verizon has given itself for anticipated implementation is clearly excessive. It is not even a firm commitment, and there are no penalties for failure to achieve implementation by any date, whether June 30, 2002 or some other time.

Requiring implementation by December 31, 2001 (or a reasonable delay, if agreed to by Sprint) is reasonable. Therefore Sprint's proposed language should be

accepted. Despite this recommendation, I urge the parties to continue to discuss this item, as it is the interests of both parties that implementation go smoothly.

Issue #28: Collocation Obligations

This issue involves Verizon's request to collocation its facilities in Sprint's switch centers. Although it has no legal obligation to do so, Sprint has agreed provided Issues #16 and #17 are decided in its favor.

As I have adopted Sprint's position on Issues #16 and #17, its proposed language allowing such collocation should be adopted.

III. RECOMMENDED ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That in regard to the unresolved issues between Sprint Communications Company, L.P., Verizon Pennsylvania, Inc. and Verizon North, Inc., the proposed language of each party for inclusion in the proposed interconnection agreements is either approved, modified or rejected consistent with this order.

2. That within 30 days after entry of the Commission's Order in this proceeding, Sprint Communications Company, L.P., Verizon Pennsylvania, Inc. and Verizon North, Inc. shall file with the Commission for approval interconnection agreements consistent with this order.

3. That the following exhibits are admitted into the record: Verizon Exhibit 1 (Robinson statement); Verizon Exhibit 2 (January 29, 2001 letter); Sprint Final Offer and Exhibits 11-17; Verizon Final Offer; Joint Stipulation; and Verizon Latest Proposals.

4. That upon the filing of the interconnection agreements, and their approval by the Commission, this proceeding be marked closed.

Date: August 8, 2001

MARLANE R. CHESTNUT
Administrative Law Judge